



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

**Reserved on : 22.11.2023**

**Pronounced on : 18.12.2023**

+ **BAIL APPLN. 2586/2023**

**JITENDRA KUMAR @ JEETU**

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate  
with Dr. Ajay P Tushir, Mr. Paras  
Tushir, Mr. Shalender and Mr.  
Ishan Jain, Advocates.

versus

**THE STATE (NCT OF DELHI)**

.... Respondent

Through: Mr. Amit Ahlawat, APP for the State  
with SI Manisha, PS Ambedkar  
Nagar.  
Mr. Vikrant Choudhary and Mr.  
Rishabh Bariya, Advocates for  
complainant.  
Mr. Gaurav Sharma, Advocate for  
victim.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

**RAJNISH BHATNAGAR, J.**

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C read with Section 482 Cr.P.C. for grant of regular bail in case FIR No. 576/2020 U/s 363/376D/323/354 IPC and Section 4/6 of POCSO Act registered at Police Station Ambedkar Nagar.

2. Briefly stated, the facts of the case are that the present FIR was



registered on the statement of victim "M" age-12 years. The victim in her statement alleged that her mother was working in the office of accused Pintu. She further alleged that on 27.08.2020, accused Dinesh @ Pintu along with his two friends came at Dakshinpuri at victim's house in his car to pay rent/salary to her mother. After that, victim asked accused Pintu for shopping of some clothes from Madangir market.

3. Victim in her statement further alleged that accused Pintu offered her a seat in his car and despite taking her to Madangir market they all three took her to a hotel in Faridabad, where they booked two rooms and entered in her room one by one and all touched her body and breast and made physical relations with her against her wish. Thereafter at about 8:30 PM they left her near her house at Dakshinpuri. She stated that she don't know the name and address of two co-accused persons, but can identify them.

4. The victim was got medically examined at AIIMS Hospital and A/H/O-"history given by patient (victim) and her mother (reliability good) Alleged history of sexual assault by 3 people Pintu and 2 other names not knows. These 3 men took victim out on pretext of shopping, they took her to hotel room and victim gives history of fiddling with her breast and complete vaginal penetration by two of these 3 men around 4-5 p.m. on 27.08.2020 after this victim was dropped around her house at 8:30 p.m. No history of vaginal bleeding or discharge."

5. As per the Status Report, during the course of investigation statement of the victim U/s 164 Cr.P.C. was got recorded and she corroborated her version. Accused Dinesh @ Pintu was arrested and during interrogation he



disclosed the name of the petitioner and his Jija accused Pramod Kumar. During investigation on 06.10.2020, petitioner and co-accused Pramod Kumar were arrested. After completion of the investigation, the charge sheet was filed.

6. I have heard the Ld. Sr. counsel for the petitioner, Ld. APP for the State ably assisted by the Ld. counsel for the complainant/victim, perused the Status Report and also perused the records of this case.

7. It is submitted by the Ld. Sr. counsel for the petitioner that the statement of the victim U/s 164 Cr.P.C. was recorded on 31.08.2020 and there is no whisper for the present petitioner and it is further submitted that the victim was examined by the doctors at AIIMS and the medical history records that two grown up persons have done complete vaginal penetration but as per the medical document there is no whisper of vaginal bleeding or discharge. It is further submitted that the victim was examined on the same day on which it is alleged that the sexual assault was made upon her.

8. It is further submitted by the Ld. Sr. counsel for the petitioner that the victim has failed to identify the petitioner in TIP proceedings. It is further submitted that there are call details between the co-accused Dinesh, victim's mother, co-accused Pintu and between victim and her mother which clearly shows that the victim was not under pressure or nothing has happened with the victim and she has falsely implicated the petitioner.

9. It is further submitted that the petitioner is languishing in jail for the last more than 30 months. The testimony of the victim has been recorded wherein she has stated that the accused had not done anything wrong with



her. It is further submitted that during her cross examination the complainant had stated that she had given her statement at the behest of police officials. It is further submitted that no PCR call was made by the victim or her mother after the commission of offence and there is also a delay in the registration of the FIR.

10. On the other hand Ld. APP for the State ably assisted by the Ld. counsel for the complainant/victim opposed the bail application and has argued on the lines of the Status Report. It is further argued by the Ld. APP that the victim was aged around 12 years at the time of incident and three grown up men have taken her in a hotel room on the pretext of shopping which is evident from the CCTV footage of the hotel. It is further submitted by the Ld. APP that the allegations against the petitioner are grave and serious in nature and all the accused persons in furtherance of their common intention kidnapped the minor child and took her to OYO room in Faridabad where she was allegedly gang raped and aggravated sexual assault was committed upon her.

11. It is further submitted that physical violence has been reported in the MLC. It is further submitted that the victim was threatened not to disclose anything to anybody. It is further submitted by the Ld. APP that the victim has stood the test of cross examination and supported the prosecution version. It is further submitted that only at the end of her cross examination on behalf of the petitioner, the victim has stated that no one had done anything with her and a simple line stated by the victim cannot nullify her entire testimony given in the Court wherein she has supported the entire case of the prosecution. It is further submitted that in case there is any variation



in the medical report and the ocular testimony, the ocular testimony takes precedence and the petitioner is not entitled to bail.

12. In the instant case, the victim on the date of the incident was only 12 years of age and she was taken to a hotel in Faridabad and the case set up by the petitioner and his co-accused is that the victim was taken for getting her some clothes from a nearby market in Delhi which was not so, rather she was taken by the petitioner and his two co-accused to a hotel room where she was assaulted. The petitioner has been identified in the CCTV footage of the hotel where the petitioner is seen alongwith two other co-accused and the victim.

13. The victim has been consistent throughout in her testimony but only at the fag end of her cross examination done on behalf of the petitioner, she has stated that no wrong has been committed but simply by this sole line, the entire testimony of the victim cannot be thrown away or belied. Even otherwise, this is not the stage to analyze this single line in contradiction to the entire examination in chief and the cross examination of the victim alongwith the MLC.

14. As far as the question of variance in the testimony of the victim as well as the medical evidence, the same also cannot be outlined in detail so as to reach any conclusion either favouring the prosecution or favouring the petitioner. However, the allegations against the petitioner are serious. Three fully grown up men have taken a 12 years old girl to a hotel and confined her in a hotel room. The allegations being grave and serious in nature and in view of the discussions hereinabove, no ground for bail is



2023:DHC:9099



made out. The bail application is, therefore, dismissed.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

**RAJNISH BHATNAGAR, J**

**DECEMBER 18, 2023**

*sd*